CF0000060858

Cri Appeal - 675/95

(2)

/- APPEAL OF PRISONER -/

Division Bench (Criminal)

No. 326 Name कानसाय

Father's Name फुलचन्द Residence ग्राम - कोराल टेमनी
थाना - नरहरपुर

Age 37 Sentenced to आजीवन कारावास on

2.12.95 under Section 302 I.P.C. by A.S.J. Kanker

S.T.No. 16/94

It is explained to the prisoner that if he states or Wishes to be represented by a legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear with the seven days he may be heard at all if the prisoner states that the does not wish to be represented by legal practioner the Court may proceed at once with the case and will not be obliged to give a hearing to any legal proct-itioner who should appear.

1. Date of application for copy of Judgement : No.

2. Date of which copy received :- 9.12.95

3. Date on which Appelisent :- 16.12.95

4. Whether the prisoner wished to be represented or not Yes/~~No.~~

No. 326 Name कानसाय पिता फुलचन्द

Continued in जिला Jail जगदलपुर

No. 206/octagon/95 Dated 16/12/95

Forwarded to the CHIEF JUDICIAL MAGISTRATE Jagdalpur. together with a copy of judgement or order passed in the case for favour of transmission to the proper Appliate Court.

अधीक्षक
जिला जेल, जगदलपुर (बस्तर) मध्य प्रदेश

Superintendent-Central/Distt./
जगदलपुर

Date of receipt in C.J.M's Office. 20.12.95

Date of receipt of record of accompany. —

Memo of Appeal of the Appelliate Court.

No. 70(2) Dated 20.12.95

Forwarded to the Hible Sessions Judge Jagdalpur.

C.J. Magistrate

for

Date of receipt of Appelliate Court.

XI-HC-22

(11)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr. A. No. 675/96 ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: HON'BLE SHRI L.C.BHADOO & HON'BLE SHRI DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO. 675 of 1996

Appellant : Kansai

Vs.

Respondent : State of Madhya Pradesh

Smt. Indira Tripathi, learned counsel for the appellant.

Shri Ravindra Agrawal, learned Panel Lawyer for the respondent/State.

ORAL JUDGMENT
(21.02.2006)

L.C.Bhadoo, J

The appellant has preferred this appeal under Section 374(2) of the Criminal Procedure Code questioning the legality and correctness of the judgment of conviction and order of sentence dated 2nd December 1995 passed by learned Additional Sessions Judge, Kanker in S.T. No. 16/94 whereby the learned Additional Sessions Judge after holding the accused/appellant guilty for the commission of offence under Section 302 of the IPC sentenced him to undergo imprisonment for life.

2. Case of the prosecution in brief, is that Sagram Markam lodged a merg intimation Ex.P.-1 in the police station Narharpur, District-Bastar on 06.09.93 at about 9.00 a.m. to the effect that a day before thereto, in the evening at about 7.00 p.m. Manglu, son of Kansai came and informed him

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to their house

that Bengali doctor came in a drunken condition at about 12.00 noon and had died there. On receiving this information he along with village Kotwar Rome Singh, Bhagvali, Ganguram and Sukru went to his house and saw that Bengali doctor Arvind Vishwas was lying dead in the courtyard of the house of Kansai. Receiving this merg intimation the Investigating Officer left for the scene of occurrence and after giving notice P-14 to the panchas, prepared panchnama P-18 of the body of Arvind Vishwas. While in police custody the accused/appellant gave memorandum P-2 and in pursuance of that one wooden club was taken into possession under P-3. Blood stained and simple soil was taken into possession under P-4. One bag containing medicine was taken into possession under P-5. The body of Arvind Vishwas was sent to K.D. Hospital, Kanker for post mortem examination under P-6A where Dr. M.A. Naseem P.W.-3 conducted the post mortem on the body of Arvind Vishwas and prepared the post mortem report P-6. Site plan P-9 was prepared by the Patwari based on the merg intimation and other reports. Dehati Nalishi P-12 was given by P.W.-8 Panna Lal and based on that First Information Report P-13 was registered. After completion of the investigation charge sheet was filed against the accused/appellant in the Court of Judicial Magistrate First Class, Kanker who in turn committed the case to the Sessions Judge, Jagdalpur from where the learned Additional Sessions Judge, Kanker received the case on transfer for trial.

3. After completion of the trial learned Additional Sessions Judge convicted and sentenced the accused/appellant as mentioned in paragraph one of this judgment.

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4.	We have heard Smt. Indira Tripathi, learned counsel for the accused/appellant and Shri Ravindra Agrawal, learned P.L. on behalf of the State.	
5.	Homicidal death of Arvind Vishwas is not in dispute.	
6.	As far as the involvement of the accused/appellant in the crime in question is concerned, learned counsel for the accused/appellant argued that as the deceased Arvind Vishwas came to the house of the accused in a drunken condition and he was sleeping and when the accused made him to woke up he started quarrelling with the accused/appellant on which the accused slapped him twice therefore, the offence against the accused/appellant under Section 302 of the IPC is not made out in any circumstance and there is no other evidence which connect the accused with the said crime.	
7.	On the other hand Shri Agrawal supported the judgment of the trial Court.	
8.	Having heard the counsel for the parties, we have perused the judgment of the trial Court as well as the records of the trial Court. P.W.-6 Manglu Ram is none else than the son of the accused has stated that on the fateful day at about 12.00 noon Bengali Doctor came to their house and slept there. At that time his father was not at the residence. By the time his father came he had already left for taking bath in the pond. When he returned after taking bath he saw that Bengali Doctor was already dead. P.W.-7 Rome Singh has stated that the Bengali Doctor was his tenant. He died in the house of the accused Kansai and on information by the village	

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Kotwar he went along with the Kotwar and Sarpanch to the house of the accused and saw that the Bengali Doctor was lying dead in the courtyard of Kansai and on enquiry he informed that he slapped the deceased twice and how he died he does not know. Similar is the evidence of P.W.-1 Sagram and P.W.-2 Ramlal, Kotwar.

9. In view of the above evidence it is established that the dead body of Arvind Vishwas was found in the house of the accused and on enquiry by these independent witnesses he made extra judicial confession that as the deceased was sleeping in his house he slapped him. ~~Accused~~ P.W.-3 Dr. M.A. Naseem who conducted the post mortem on the body of the deceased Arvind Vishwas, has stated that there was contusion and clotted blood was present on the neck of the deceased on both the sides in the size of 2 x 1 cm. and he has further stated that on dissection of the body he found that cricoid and thyroid ericoid and part of hyoid cartilage was found broken. Larynges structure was separated from the wind pipe and on opening of the chest it was found that the ribs on the left side were fractured, the right lung was also ruptured and the cause of death was stoppage of respiratory system and the injury on the chest and neck. Therefore as per the medical evidence, Arvind Vishwas died on account of injuries on the chest and neck. Learned counsel for the accused/appellant argued that it is evident from the memorandum, Dehati Nalishi, panchnama and evidence of the prosecution witnesses that deceased Arvind Vishwas was in the habit of drinking and when he came and slept in the house of accused in drunken condition, the accused/appellant tried to woke him up to get him out of the house in that process, all of a sudden

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..... विरुद्ध .....

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	the accused assaulted the deceased and there was no intention to kill the deceased.	
10.	In order to appreciate the arguments advanced by the counsel for the accused/appellant we have perused the record and as per the memorandum and panchnama it has come on record that deceased was in the habit of consuming liquor and there is nothing in record which shows that the accused had any animosity with the deceased. It appears that in sudden quarrel, in heat of passion without pre meditation the accused assaulted the deceased with club as a result of which he received the vital injury. Therefore, we are of the opinion that the act of the accused is covered under exception 4 of Section 300 of the IPC and offence of the accused does not travel beyond 304-II of the IPC.	
11.	In the result, the appeal partly succeeds. The judgment of conviction and sentence passed against the accused/appellant by the trial Court are set aside as such he is acquitted of the charges under Section 302of the IPC instead of ~~thereby~~ Hul- he is convicted under Section 304-II of the IPC and sentenced to undergo imprisonment for ten years. It is stated that the accused/appellant is in custody since 07.09.93 and thereby he has already undergone more than twelve years of imprisonment therefore, he be set at liberty forthwith, if not required in any other case.	
	Sd/- **L.C. Bhadoo** **Judge**	**Sd/-** **Dhirendra Mishra** **Judge**

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